

Provisional Election of Species I (claims 9, 10, and 16-25) Pursuant to 37 C.F.R. § 1.143

Pursuant to 37 C.F.R. § 1.143, Applicants request reconsideration and withdrawal of the requirement for restriction contained in the Communication. Accordingly, Applicants provisionally elect Species I (claims 9, 10, and 16-25, drawn to customer incentive report) for continued prosecution in the event the requirement becomes final.

Applicants' reasons for requesting reconsideration and withdrawal of the requirement for restriction flow from the fact that the Communication provides:

This application contains claims directed to the following *patentably distinct species* of the claimed invention:

- Species I:** Claims 9, 10 and 16-24, drawn to customer incentive report.
- Species II:** Claim 26, drawn to the product information comprising pricing information.
- Species III:** Claims 27-28, drawn to the product information comprises wellbeing information.
- Species IV:** Claim 29, drawn to the purchase information.
- Species V:** Claims 30-32, drawn to the customer is associated with a customer account.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

See Communication at 2 (emphasis added).

The Examiner has required restriction of the instant application based on a determination that the application contains “patentably distinct species of the claimed invention.” *See supra*. In such a circumstance, “[t]he burden is on the examiner to provide an example to support the

determination that the inventions are distinct.” *See* MPEP § 806.05(j). Additionally, Section 808.01 of the MPEP provides, “[t]he particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated . . . [a] mere statement of conclusion is inadequate.” *See* MPEP § 808.01. Applicants contend the Communication contains no support for a determination that the application contains “patentably distinct species,” and as a result is an impermissible “mere statement of conclusion” as to same. *See* Communication.

Furthermore, MPEP § 808.02 provides, “in order to establish reasons for insisting upon restriction, [the Examiner] must explain why there would be a serious burden on the examiner if the restriction requirement is not required.” *See* MPEP § 808.02. Applicants contend that the Communication contains no explanation as to why there would be a serious burden on the Examiner if the restriction requirement is not required. *See* Communication.

Based on the foregoing, Applicants contend the Communication’s requirement for restriction is improper and should be rescinded.

CONCLUSION

Applicants respectfully look forward to the Examiner's substantive action on this Response.

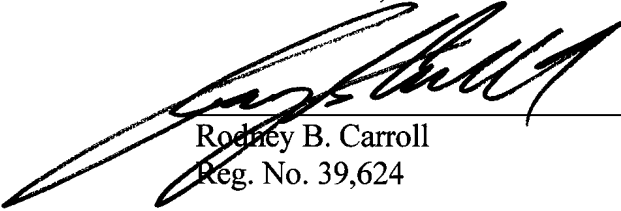
If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to contact the undersigned at the telephone number given below.

Respectfully submitted,
CONLEY ROSE, P.C.

Date: _____

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